

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel.)	
PAULA A. FLOWERS, Commissioner of)	
Commerce and Insurance for the State)	
Tennessee,)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
TENNESSEE TRUCKING ASSOCIATION))	
SELF INSURANCE GROUP TRUST,)	
a Tennessee workers compensation self-)	
insurance group; TRUCKING SERVICES,)	
INC., a Tennessee corporation.)	
)	
Respondent.)	

**VERIFIED PETITION FOR APPOINTMENT OF RECEIVER
FOR PURPOSES OF LIQUIDATION OF TENNESSEE TRUCKING
ASSOCIATION SELF INSURANCE GROUP TRUST; INJUNCTION;
REQUEST FOR EXPEDITED HEARING**

Petitioner, Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee ("Commissioner" or "Department"), by her counsel, Paul G. Summers, Attorney General of the State of Tennessee states as follows:

NATURE OF THE ACTION

1. This is a formal proceeding seeking an order by this Court appointing the Commissioner as receiver to liquidate the Tennessee Trucking Association Self Insurance Group

Trust (“TTA-SIGT”), a Tennessee trust and workers compensation self-insurance group regulated by the Department. Under Tenn. Code Ann. § 50-6-405(c) and Tenn. Comp. Rules & Regs. Chapter 0780-1-54, the Department’s Rules governing Self-Insured Workers’ Compensation Pools, TTA-SIGT was authorized to pool the liability of its member-employers incurred under the Tennessee Workers’ Compensation Law. The State requests an order under Tenn. Code Ann. § 56-9-306 under the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, et seq. (hereinafter the “Act”), permitting the Commissioner to act as receiver to liquidate TTA-SIGT. This remedy is required due to TTA-SIGT’s admitted insolvency and projected losses in the 2002-03 fund years amounting to an estimated shortfall of approximately \$7.3 million. TTA-SIGT has not remedied its substantial deficit even after being ordered to assess and make collections from its members. Because only a small fraction of the assessments were paid, cash to pay claims is expected to run out. A liquidation imposes an orderly process to close out the business of TTA-SIGT, and will permit the receiver to collect amounts owing to the group by its members and others and to conclude all claims against this insurance group. The State also requests an injunction against suits and other acts that could interfere with the efforts of the receiver, and mandatory cooperation of all persons, service companies, administrators and entities that have been carrying out the business of TTA-SIGT as set out in the liquidation statutes.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this action pursuant to Tenn. Code Ann. § 56-9-104, and venue of this action is properly in the Chancery Court of Davidson County pursuant to Tenn. Code Ann. § 56-9-104(e).

THE PARTIES

3. The Petitioner, Paula A. Flowers, is the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee. Pursuant to Tenn. Code Ann. §§ 56-9-101, *et seq.*, the rehabilitation, liquidation or conservation of a domestic insurance company is to be conducted by the Commissioner after her appointment as receiver by the Court. Tenn. Code Ann. §§ 56-9-301, *et seq.*

4. Respondent, Tennessee Trucking Association Self Insurance Group Trust (“Respondent,” “TTA-SIGT” or “the insurer”) is a trust organized under the laws of the State of Tennessee whose address and principal place of business is located at 7135 Centennial Place, Nashville, TN 37209. TTA-SIGT holds a certificate of approval from the Department as a workers’ compensation self-insurance group pursuant to the provisions of Tenn. Code Ann. § 50-6-405(c) and Rules of the Tennessee Department of Commerce and Insurance, Insurance Division, Tenn. Comp. Rules & Regs. Chapter 0780-1-54 (hereinafter “Rules”). Pursuant to this statute, a group of ten or more employers in the same trade or professional association may form a pool for self-insurance by all members collectively against claims made against any member by its employee(s). Under the pertinent statute and Rules, member-employers join the group on the condition that each member-employer become jointly and severally liable under an indemnity agreement to meet the workers’ compensation obligations of the group and each member, and be subject to assessment for deficiencies in the fund.

5. TTA-SIGT was first granted a certificate of authority to operate as a self-insurance group effective January 1, 1995. TTA-SIGT has insured workers compensation liability for its members for certain coverage periods since its inception. Following a period of

dormancy, the trust was reactivated in the two most recent years, 2002 and 2003. Within that period, the trust has insured over 50 trucking employers as members for liability under Tennessee's workers compensation law. Also within that period, TTA-SIGT has become financially unsound and has produced deficits as shown below. TTA-SIGT has not been eligible to provide coverage during 2004. TTA-SIGT has been under an Agreed Order of Administrative Supervision by the Department since May 2, 2003, and under certain other directives and orders of the Commissioner to address the deficit. (*See* Affidavits of Larry C. Knight, Assistant Commissioner (Exhibit **A**) and of Mark E. Jaquish, Examiner, (Exhibit **B**) hereto).

6. TTA-SIGT's Board of Trustee members are : Donnie Kemp, Chairman, K & K Trucking, Inc., 147 Transport Dr., Gordonsville, TN 38563; Joe Gobble, Southeast Carriers, 1905 Mahr Ave., Lawrenceburg, TN 38464; Bill Reed, Skyline Transportation, Inc., 131 W. Quincy Ave., Knoxville, TN 37917; and Clarence Easterday, Western Express, Inc., 3750 Stewarts Lane, Nashville, TN 37218. A fifth Trustee resigned. TTA-SIGT's counsel is Dan Elrod, Esq., Miller & Martin, LLP, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219-2433.

7. Respondent Trucking Services, Inc., is a Tennessee for profit corporation with its principal office located at 4531 Trousdale Drive, Nashville, TN 37204, Dominick Marino, Executive Vice President. TTA-SIGT engaged Trucking Services, Inc. ("TSI") as its Administrator to carry out the policies established by the Board of Trustees and provide day-to-day management of TTA-SIGT within the meaning of Section .02(1) of Chapter 0780-1-54, Self-Insured Workers' Compensation Pools Rules. Trucking Services, Inc.'s registered agent is Christopher Burruss, President, 4531 Trousdale Drive, Nashville, TN 37204. Trucking Services,

Inc. has control of accounts of TTA-SIGT and its financial records. Any liquidation of TTA-SIGT cannot be carried out without the full cooperation of Trucking Services, Inc., its directors, agents, employees and officers. Trucking Services, Inc. is named and served as a party Respondent to effectuate the liquidation, and assist in obtaining that full cooperation and adherence to the Court's injunctions.

8. Management Services USA, LLC ("MSUSA"), a Cannon Cochran Management Services, Inc. company, with offices at 4621 W. Napoleon Av. Suite 310, Metairie, LA 70001, as well as Tennessee staff, was engaged by TTA-SIGT in 2003 to serve as its Third Party Administrator, and has performed workers compensation claims management and administration for TTA-SIGT. These services have included all claims processing, adjustment and payment processing. MSUSA has records of TTA-SIGT that will be required in the liquidation of TTA-SIGT, and the receiver may exercise authority to continue or modify the administrative relationship for authorized services in aid of the liquidation. In light of the relationship, it appears that any liquidation of TTA-SIGT likely cannot be carried out without the cooperation of MS USA, its directors, agents, employees and officers. MS USA is being given notice of the pendency of this action and any order that may affect its further obligations because of its role for TTA-SIGT. Similarly, records or cooperation may be required from other entities or individuals in relation to the insurance program of TTA-SIGT, such as the prior third party administrator Brentwood Services, Inc., located in Brentwood, Tennessee. If so, any such entities and former administrators for TTA-SIGT will also be expected to cooperate with the Liquidator. Under Tenn. Code Ann. § 56-9-106, all persons who have been performing or are

concerned in any way with the affairs of TTA-SIGT are required to cooperate with the Liquidator.

FACTUAL GROUNDS FOR LIQUIDATION OF TTA-SIGT

9. Attached to this Petition as Exhibit **A** is the Affidavit of Larry C. Knight, Jr., Assistant Commissioner for Insurance, the present supervisor appointed by the Commissioner for TTA-SIGT, attesting the appointment of Mark E. Jaquish as the Examiner for the Department with respect to the business and affairs of TTA-SIGT. Also attached hereto as Exhibit **B** is the Affidavit of Mark E. Jaquish, an Examiner within the Department, concerning the financial condition, business and affairs of TTA-SIGT (“Jaquish Affidavit”). The Jaquish Affidavit establishes that the continued operation of TTA-SIGT would be hazardous financially to its members, creditors and the public, that TTA-SIGT has not come into compliance with orders of the Commissioner to make up the deficit, and that TTA-SIGT is insolvent.

10. The Jaquish Affidavit states, *inter alia*, that

- A) TTA-SIGT concluded the calendar year 2002 with a net loss for the year of \$2,834,656, with the result that the Trust had a cumulative net worth, or “Members’ balance” as of the year ended December 31, 2002 of (\$2,380,258);
- B) TTA-SIGT was placed under an Agreed Order of Administrative Supervision by the Department of Insurance on May 2, 2003;
- C) TTA-SIGT was directed by letter from the Department on July 24, 2003, to assess its members in an amount sufficient to remedy the 2002 deficit;

- D) TTA-SIGT failed to comply with said direction, thus violating Rule 0780-1-54-.18, found in the Rules for Self-Insured Workers' Compensation Pools;
- E) Petitioner entered an Order of Assessment on October 1, 2003, requiring that the members of TTA-SIGT be assessed for the deficit;
- F) TTA-SIGT has failed to comply with the Petitioner's Order of Assessment. TTA-SIGT has contested the allocation to individual members set forth in the Order of Assessment, but *does not dispute* that approximately \$2,800,000 must be assessed. Even if TTA-SIGT came into compliance for 2002, this does not assure that a further projected deficit for 2003 would be mitigated;
- G) The Actuarial Report of TTA-SIGT, dated November 17, 2003, and submitted to the Department on December 11, 2003, estimated the loss for the year ended December 31, 2003 as \$4,632,331, and projected total estimated losses for 2002 and 2003 of \$7,399,868, with a resulting cumulative negative net worth as of December 31, 2003, of (\$6,936,470).
- H) TTA-SIGT has already spent its entire available 2002 premium collections, and current payments for 2002 claims are being made out of 2003 funds. The definitive 2003 assessment still awaits final measurement and projection which are generally calculated in conjunction with the required financial statements filed with the Department six months after the conclusion of the calendar year. Because TTA-SIGT is not writing business in 2004, there is no new income stream and no reliable source of further assessed premium for the two prior years.

I) Counsel to Respondent TTA-SIGT has tendered to Petitioner a proposed “run-off” plan for the payment of claims outstanding against TTA-SIGT, a copy of which is attached to the Affidavit, that utterly fails to bring Respondent into compliance with the Commissioner’s Order of Assessment.

11. Due to the inability of TTA-SIGT to collect adequate funds to eliminate the deficit after reasonable notice, the Petitioner cannot be assured in the present circumstances that TTA-SIGT will succeed in collecting amounts due from its members in order to pay claims duly made against it, or that anyone is duly authorized and ready to enforce such collections on behalf of TTA-SIGT. Theoretically, under the Rules, TTA-SIGT should be able to assess its members on the premise that their failure to contribute causes each of them to become liable for TTA-SIGT’s debts. But to date successful collection has not occurred. The circumstances have shown difficulties in obtaining definitive or effective action by TTA-SIGT, and no further information provided with respect to TTA-SIGT has materially improved its prospects. This previous inability to collect assessments indicates to Petitioner that TTA-SIGT will not be able to do so effectively when the group runs wholly out of cash. On the basis of its Supervision and Examination of TTA-SIGT, Petitioner has no confidence that TTA-SIGT, its managers and agents will distribute to its claimants what assets are or may become available in a fair and proportionate manner, and in particular that the recipients of payments from TTA-SIGT will be those entitled to be paid under the priorities provided by insurance law. On the basis of its Supervision and Examination of TTA-SIGT, Petitioner has no assurance that TTA-SIGT will promptly notify all concerned persons of the need for them to obtain other workers’ compensation coverage for their employees.

12. Accordingly, the Commissioner has determined that TTA-SIGT is insolvent and the continued operation of TTA-SIGT would be hazardous, financially and otherwise, to its policyholders, members, its general creditors and the public.

13. Accordingly, the Commissioner requests formal delinquency proceedings under the Act, for the Court to appoint the Commissioner liquidator (hereinafter referred to as “Receiver”) of TTA-SIGT for the purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-306, with all the powers granted to receivers by statute and this Court’s orders, and to enjoin all persons described below from interfering with the conduct of the duties of the receiver as provided by Tenn. Code Ann. § 56-9-105. Petitioner proposes, as receiver and liquidator for TTA-SIGT, to marshal the assets of TTA-SIGT and pursue collections of all amounts due TTA-SIGT from its members and others in order to meet, insofar as possible, the liabilities of TTA-SIGT for the workers compensation benefits and payments on behalf of the members’ employees whose workers’ compensation payments are not being made or may not be made.

LEGAL GROUNDS FOR LIQUIDATION

14. TTA-SIGT is an insurer subject to the formal delinquency proceeding provisions of the Act. TTA-SIGT has been authorized by the Department to conduct an insurance business in Tennessee as a workers compensation self-insurance group under Tenn. Code Ann. § 50-6-405(c). It has solicited members for its authorized business and has incurred risks so that claims exist against TTA-SIGT and will arise in the future related to losses incurred during the coverage it has already provided. The proceedings of the Act may be applied to all insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future. Tenn. Code Ann. § 56-9-102(1). Tenn. Code Ann. § 56-9-103(12) defines insurer for purposes of the Act as: “any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner.”

15. This petition is brought pursuant to Tenn. Code Ann. § 56-9-306 of the Act, which provides that the Commissioner may request liquidation, regardless of whether there has been any prior order directing rehabilitation of the insurer, as follows:

The commissioner may petition the chancery court of Davidson County for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of **any ground for an order of rehabilitation** as specified in § 56-9-301, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) **That the insurer is insolvent; or**

(3) That the insurer is in **such condition that the further transaction of business would be hazardous, financially or otherwise**, to its policyholders, its creditors or the public.

Tenn. Code Ann. § 56-9-306 (emphasis added). Tenn. Code Ann. § 56-9-301 provides that the Commissioner may apply to rehabilitate (and, by virtue of Tenn. Code Ann. § 56-9-306(1), to liquidate) an insurer, if “[t]he insurer is in such condition that the further transaction of business **would be hazardous financially** to its policyholders, creditors or the public.” Tenn. Code Ann. § 56-9-301(1) (emphasis added).

16. For purposes of Tenn. Code Ann. § 56-9-306(2), an insurer is considered insolvent if:

(B) . . . **it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities**, plus the greater of:

- (i) Any capital and surplus required by law for its organization; or
- (ii) The total par or stated value of its authorized and issued capital stock;

...

(D) “liabilities” include, but are not limited to, reserves required by statute or by department general regulations or specific requirements imposed by the commissioner

Tenn. Code Ann. § 56-9-103(11).

17. Similarly, Rule 0780-1-54-.02(3) provides that in the case of a self-insurance group “insolvency” means “the inability of a workers’ compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown by an excess of its required reserves and other liabilities over its assets.” The rules applicable to workers’ compensation self insurance pools provide that: “[i]f the group fails to make the required assessment of its members within thirty (30) days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date which such assessment is made, or within such longer period as may be specified by the commissioner, the group shall be deemed to be insolvent.” Tenn. Comp. Rules & Regs., ch. 0780-1-54-18(4).

18. Liquidation by the Commissioner is contemplated as an appropriate remedy for insolvent insurance groups such as TTA-SIGT. Section (5) of Rule 0780-1-54-.18 states: “In the event of the liquidation of a group, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.”

19. Moreover, the relevant definitions of insolvency do not require that the TTA-SIGT already have stopped paying all its claims, or experience that degree of financial crisis before the Commissioner may take action for the protection of members, covered member employees, and other creditors. The purposes of the Act, as set forth in Tenn. Code Ann. § 56-9-101(d), include “Early detection of any potentially dangerous condition in an insurer, and

prompt application of appropriate corrective measures.” Thus, there is no requirement that the Commissioner wait until the insurance pool actually stops paying its debts and contractual obligations out of its dwindling cash before she is empowered to act to avoid the prospective financial hazard to enrollees, providers and other creditors.

20. Pursuant to Tenn. Code Ann. § 56-9-133, this Verified Petition and exhibits filed thereto shall be received as prima facie evidence of the facts contained herein.

FEATURES OF LIQUIDATION RECEIVERSHIP

21. **Management and Possession of TTA-SIGT.** When a liquidator is appointed pursuant to Tenn. Code Ann. § 56-9-306, several statutory powers flow from that order under the Act. The order to liquidate the insurance pool directs the Commissioner, as Liquidator, immediately to take possession of its assets, and vests title to all assets in the Liquidator. Tenn. Code Ann. § 56-9-307(a). Upon issuance of the order to liquidate, the rights and liabilities of any such insurer, its creditors, policyholders, shareholders and members and all other persons interested in its estate shall become fixed as of the date of entry of the order. Tenn. Code Ann. § 56-9-307(b).

22. **Injunctive Relief.** The Commissioner, as Liquidator, has the ability to apply for restraining orders, temporary and permanent injunctions under Tenn. Code Ann. § 56-9-105 to prevent transaction of the insurer’s business, transfer of property, interference, waste of assets, destruction of records or data, or continuation or initiation of a number of types of actions against the insurer or its policyholders or enrollees. The Commissioner requests such injunctions against institution of any action against TTA-SIGT for the protection of TTA-SIGT and its members and insureds upon the appointment of a receiver, all as more fully set forth in the Order

terms in the prayer for relief hereto. Additionally, Tenn. Code Ann. § 56-9-313 provides that upon issuance of an order appointing a liquidator of a domestic insurer,

no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order.

Finally, under Tenn. Code Ann. § 56-9-106, all persons who have been performing or are concerned in any way with the affairs of TTA-SIGT are required to cooperate with the Liquidator This includes Respondent Trucker Services, Inc. and the other administrative, management, claims and service organizations.

23. **Avoidance Powers.** The filing of a petition for liquidation affords statutory remedies upon the entry of an order of liquidation that enable the Liquidator to avoid preferential, fraudulent and certain other financial transfers prior to the filing date of the petition. These statutory powers, found at Tenn. Code Ann. §§ 56-9-315, 316 and 317, are desirable because they increase the possible available funds for the benefits of the liquidating insurer's policyholders and creditors.

24. Additionally, the special deposits made by TTA-SIGT under Tenn. Code Ann. §50-6-405 with the Commissioner shall be turned over to the Commissioner as receiver, and can be made an asset ultimately to be applied to the debts of the insurance pool.

CONCLUSION

25. Based on all the foregoing facts, reasons, and the law, the Commissioner submits that circumstances support entry of an order of liquidation.

EXPEDITED HEARING REQUEST

26. Furthermore, the Commissioner submits that TTA-SIGT and TSI should be required to respond promptly to this Petition, and that a hearing on this Petition should be granted promptly because of the Commissioner's immediate need for the statutory powers of a Receiver. The Petitioner requests this Court to set a prompt hearing date on this Petition with an expedited date for the Respondents to file any objection and that notice of such hearing and response date be contained in a Proposed Order Setting Hearing, (filed herewith) to be served on the parties and other interested persons at which time the Liquidation Order will be considered. Due to the exigent circumstance of insolvency and dwindling funds, there is no just cause to delay the consideration of receivership. Furthermore, the trucking company employers that are the members of TTA-SIGT during 2002 and/or 2003, will receive notice of this action and any pleadings from its inception through mail service as shown on the Service List to this Petition.

WHEREFORE, premises considered, Petitioner prays as follows:

A. That this Court enter its Order finding that TTA-SIGT is insolvent, and that its continuing operation would be hazardous financially and otherwise to its members, its general creditors and the public;

B. That an Order Appointing the Commissioner and her successors in office as Liquidator of Respondent Tennessee Trucking Association Self Insurance Group Trust, be entered with substantially the following terms:

1. The Commissioner of Commerce and Insurance for the State of Tennessee, Paula A. Flowers, in her official capacity or her successors in office, is appointed Liquidator of **Tennessee Trucking Association Self Insurance**

Group Trust, Inc., a Tennessee trust that was authorized as a self insurance group or pool under Tenn. Code Ann. § 50-6-405(c) and rules thereunder, ("TTA-SIGT" "Respondent" or "insurer") for purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-306, and 307 with all the powers conferred by law on receivers and liquidators of insurers appointed under those statutes. In addition to those powers specifically enumerated in this Final Order of Liquidation and by operation of law under Tenn. Code Ann. §§ 56-9-101 *et seq.* for liquidators of insurers, the Liquidator shall have the power to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with Tenn. Code Ann. §§ 56-9-101, *et seq.*;

2. Pursuant to Tenn. Code Ann. § 56-9-307, the Commissioner, as Liquidator, is authorized and directed forthwith (1) to take possession of all accounts, assets, monies, and property (both tangible and intangible) belonging to, held by and/or in the name of **Tennessee Trucking Association Self Insurance Group Trust**, both within and without the State of Tennessee, (2) to be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the accounts, assets, monies, books and records of the insurer, wherever located, as of the date of entry of the liquidation order, and any further title or rights in property gained by the Commissioner by virtue of such receivership, and (3) to have the right to recover the same and reduce the same to possession and to administer them under the general supervision of the Court with all the powers granted a Liquidator and receivers under Tenn. Code Ann. §§ 56-9-101 *et seq.* The Commissioner shall have immediate access to and shall occupy and control the premises and all records, databases, and computer files used to carry out the business of TTA-SIGT, regardless of their location and possession;

3. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets of TTA-SIGT, including financial institution accounts held in the name of other account holders, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Liquidator, and are hereby instructed that the Liquidator has absolute control over such funds, accounts and other assets. The Liquidator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Liquidator's control without the permission of this Court;

4. Pursuant to Tenn. Code Ann. § 56-9-307, the rights and liabilities of TTA-SIGT and of its creditors, policyholders, shareholders, members and all other

persons interested in its estate shall become fixed as of the date of the entry of this Order of Liquidation, except as provided in Tenn. Code Ann. §§ 56-9-308 and 326;

5. Pursuant to Tenn. Code Ann. § 56-9-308, all policies, including bonds and other noncancellable business, in effect at the time of issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation, (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy, (4) the liquidator has effected a transfer of the policy obligation pursuant to Tenn. Code Ann. § 56-9-310(a)(10), or, (5) the date proposed by the liquidator and approved by the Court to cancel coverage;

6. This Order of Liquidation shall terminate coverage at the time specified in Tenn. Code Ann. § 56-9-308(a) for purposes of any other statute;

7. The Liquidator shall have all the powers enumerated in Tenn. Code Ann. § 56-9-310, including the power to appoint a special deputy or deputies to act for her and to determine their reasonable compensation. The special deputy shall have all powers of the Liquidator as granted by this Order and as enumerated in Tenn. Code Ann. § 56-9-310. The special deputy shall serve at the pleasure of the Liquidator;

8. The Liquidator shall have the power to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as the Liquidator may deem necessary to assist in the liquidation;

9. The Liquidator shall have the power to fix reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court, and shall have power to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

10. The Liquidator shall have the power to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry;

11. The Liquidator shall have the power to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;
12. The Liquidator shall have the power to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
13. The Liquidator shall have the power to enter into such contracts as are necessary to carry out the Order of Liquidation, and to affirm or disavow any contracts to which the insurer is a party;
14. The Liquidator shall have the power to continue to prosecute and to institute in the name of the insurer or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the Liquidator deems unprofitable to pursue further;
15. The Liquidator shall have the power to prosecute any action at law or in equity which may exist on the Liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the Liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation;
16. The Liquidator shall have the power to remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;
17. The Liquidator shall have the power under Tenn. Code Ann. §§ 56-9-315, 316, and 317 to avoid fraudulent and preferential transfers;
18. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Commissioner or Special Deputy, nor shall it exclude in any manner any right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation;

19. The amounts held in the custodial deposit account established by TTA-SIGT with the Commissioner under Tenn. Code Ann. § 50-6-405, shall be furnished to the Liquidator for purposes in the liquidation of TTA-SIGT, for which the Liquidator may draw down such funds;

20. **Notice.** The Liquidator shall give or cause to be given notice of the Order of Liquidation in accordance with Tenn. Code Ann. § 56-9-311 as soon as possible: (1) by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business; (2) by first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of liquidation; (3) by first class mail to all insurance agents of the insurer; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate;

21. **Claims Deadline** - Except as otherwise established by the Liquidator with approval of the Court, notice to potential claimants under Tenn. Code Ann. § 56-9-311(a) shall specify in the notice and require claimants to file with the Liquidator their claims together with proper proofs thereof under Tenn. Code Ann. § 56-9-324, on or before 4:30 p.m., Central Time, **Monday, MAY 10, 2004 (or other date approved by the court)**, for purposes of participating in any distribution of assets that may be made on timely filed claims that are allowed in these proceedings;

22. With notice given in accordance with Tenn. Code Ann. § 56-9-311, the distribution of assets of the insurer under Tenn. Code Ann. §§ 56-9-101, et seq. shall be conclusive with respect to all claimants, whether or not they receive notice;

23. **Protection from Suit.** Pursuant to Tenn. Code Ann. § 56-9-313, no action at law or equity or in arbitration shall be brought against the insurer or Liquidator, whether in Tennessee or elsewhere, nor shall any such existing actions be maintained or further presented or prosecuted after issuance of the Order of Liquidation. All claims must be submitted through the claims process as set forth in the Act, and as further defined in this Order. Whenever, in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of the insurer;

INJUNCTIONS AND COOPERATION

24. **Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including, but not limited to, Respondent TTA-SIGT and its officers, directors, members, subscribers, agents, attorneys, accountants, contractors, subcontractors and all other persons with authority over or in charge of any segment of TTA-SIGT's affairs, including, without prejudice to the generality, its Administrator, Respondent Trucking Services, Inc. (TSI), its claims administrators past and present, including but not limited to Management Services USA, LLC, a Cannon Cochran Management Services, Inc. company (MS USA), and Brentwood Services, Inc., TTA-SIGT's owners, members, directors, agents, employees and officers, and any others, are prohibited and permanently enjoined from:

- (1) the transaction of TTA-SIGT's business, except as to those activities as may be expressly authorized in writing by the Liquidator to aid in the liquidation,
 - (2) the waste or disposition of its property,
 - (3) the destruction, deletion, modification, concealment or waste of its records, databases or computer files,
 - (4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof until further order of this Court, and
 - (5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, enrollees, creditors or shareholders, or the administration of any proceeding under the Act;
- and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

25. **Cooperation.** Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, attorneys, accountants, contractors or subcontractors of TTA-SIGT, and any other persons with authority over or in charge of any segment of TTA-SIGT's affairs, including, without prejudice to the generality, Respondent TSI, MSUSA, their directors, agents, employees and officers, and any others, are ordered and required to cooperate with the Commissioner in the carrying out of the liquidation. The term "person" shall include any person who exercises control directly or indirectly over activities of the TTA-SIGT. Further, the term "person" shall include any person who exercises control or who participates in the activities of the TTA-SIGT, including through the record-keeping, claims administration and adjustment, financial management, payments, and computer systems operation relating to the activities of the TTA-SIGT. "To cooperate" shall include, but shall not be limited

to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, pension accounts, documents, or other records or information or computer programs and databases or property of or pertaining to TTA-SIGT wheresoever located and in his or her possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this liquidation;

26. Pursuant to Tenn. Code Ann. § 56-9-307(e), the Liquidator shall make financial reports to the Court, which shall be filed within one (1) year of the Order of Liquidation, and at least annually thereafter. Financial reports shall include the assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period;

27. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

28. No bond is required of the Commissioner as a prerequisite for the filing of this petition or entry of this liquidation order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101;

29. The Commissioner may apply to the Court for any further orders and injunctive relief which may be necessary to implement the terms of this order, or in aid thereof, to which the Commissioner may be entitled. This Court retains jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate, and;

30. That this Liquidation Order is permanent and a final order and entitled to full faith and credit, pursuant to U.S. Const. Art. IV, § 1 and 28 U.S.C. § 1738, in the state and federal courts of each of the United States.

C. That Respondents be required to file a response to this Petition, that summons issue to Respondent, and that an appropriate early hearing date be scheduled for this Petition pursuant to the proposed Order Setting Hearing, that will consider whether to grant this Petition with sufficient time for mailing notice and serving the petition and hearing order on all

Respondents and members whose addresses are available to Petitioner, as set forth in the service list attached.

D. That the filing of this Petition and any requested Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101;

E. For any such other relief as is appropriate.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

Respectfully submitted,

PAUL G. SUMMERS (BPR 6285)
Attorney General and Reporter

SARAH A. HIESTAND (BPR 14217)
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P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-6035

72159

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel.)	
PAULA A. FLOWERS, Commissioner of)	
Commerce and Insurance for the State)	
of Tennessee,)	
)	
Petitioner,)	
v.)	No. _____
)	
TENNESSEE TRUCKING ASSOCIATION))	
SELF INSURANCE GROUP TRUST,)	
a Tennessee workers compensation self-)	
insurance group; TRUCKING SERVICES,)	
INC., a Tennessee corporation.)	
)	
Respondents.)	

VERIFICATION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

1. I, Paula A. Flowers, am the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee.

2. I have read the foregoing Verified Petition for Appointment of Receiver for Purposes of Liquidation and Injunction and swear that the information contained therein is true and correct to the best of my knowledge, information and belief.

PAULA A. FLOWERS
Commissioner of Commerce and Insurance
for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 2004.

NOTARY PUBLIC

My Commission Expires: _____

Petition for Liquidation of Tennessee Trucking Association Self Insurance Group Trust

CERTIFICATE OF SERVICE

I hereby certify the Petition and all attachments thereto have been served by U.S. mail, postage prepaid, to the parties and interested entities listed on the attached service list, this _____ day of January, 2004.

SARAH A. HIESTAND